

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Iowa Code Annotated

Title XVI. Criminal Law and Procedure [Chs. 687-916] (Refs & Annos)

Subtitle 1. Crime Control and Criminal Acts [Chs. 687-747] (Refs & Annos)

Chapter 709. **Sexual** Abuse (Refs & Annos)

I.C.A. § 709.15

709.15. **Sexual exploitation** by a counselor, therapist, or school employee

Effective: July 1, 2017

Currentness

<[Text subject to final changes by the Iowa Code Editor for Code 2018.]>

1. As used in this section:

a. “Counselor or therapist” means a physician, psychologist, nurse, professional counselor, social worker, marriage or family therapist, alcohol or drug counselor, member of the clergy, or any other person, whether or not licensed or registered by the state, who provides or purports to provide mental health services.

b. “Emotionally dependent” means that the nature of the patient's or client's or former patient's or client's emotional condition or the nature of the treatment provided by the counselor or therapist is such that the counselor or therapist knows or has reason to know that the patient or client or former patient or client is significantly impaired in the ability to withhold consent to **sexual** conduct, as described in subsection 2, by the counselor or therapist. For the purposes of subsection 2, a former patient or client is presumed to be emotionally dependent for one year following the termination of the provision of mental health services.

c. “Former patient or client” means a person who received mental health services from the counselor or therapist.

d. “Mental health service” means the treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental, or social dysfunction, including an intrapersonal or interpersonal dysfunction.

e. “Patient or client” means a person who receives mental health services from the counselor or therapist.

f. (1) “School employee” means any of the following, except as provided in subparagraph (2):

(a) A person who holds a license, certificate, or statement of professional recognition issued under chapter 272.

- (b) A person who holds an authorization issued under chapter 272.
- (c) A person employed by a school district full-time, part-time, or as a substitute.
- (d) A person who performs services as a volunteer for a school district and who has direct supervisory authority over the student with whom the person engages in conduct prohibited under subsection 3, paragraph "a".
- (e) A person who provides services under a contract for such services to a school district and who has direct supervisory authority over the student with whom the person engages in conduct prohibited under subsection 3, paragraph "a".
- (2) "School employee" does not include a student enrolled in the school district.
- g. "Student" means a person who is currently enrolled in or attending a public or nonpublic elementary or secondary school, or who was a student enrolled in or who attended a public or nonpublic elementary or secondary school within thirty days of any violation of subsection 3.

2. a. **Sexual exploitation** by a counselor or therapist occurs when any of the following are found:

- (1) A pattern or practice or scheme of conduct to engage in any of the conduct described in subparagraph (2) or (3).
- (2) Any **sexual** conduct, with an emotionally dependent patient or client or emotionally dependent former patient or client for the purpose of arousing or satisfying the **sexual** desires of the counselor or therapist or the emotionally dependent patient or client or emotionally dependent former patient or client, which includes but is not limited to the following:
- (a) Kissing.
- (b) Touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals.
- (c) A sex act as defined in [section 702.17](#).
- (3) Any **sexual** conduct with a patient or client or former patient or client within one year of the termination of the provision of mental health services by the counselor or therapist for the purpose of arousing or satisfying the **sexual** desires of the counselor or therapist or the patient or client or former patient or client which includes but is not limited to the following:

(a) Kissing.

(b) Touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals.

(c) A sex act as defined in [section 702.17](#).

b. **Sexual exploitation** by a counselor or therapist does not include touching which is part of a necessary examination or treatment provided a patient or client by a counselor or therapist acting within the scope of the practice or employment in which the counselor or therapist is engaged.

3. a. **Sexual exploitation** by a school employee occurs when any of the following are found:

(1) A pattern or practice or scheme of conduct to engage in any of the conduct described in subparagraph (2).

(2) Any **sexual** conduct with a student for the purpose of arousing or satisfying the **sexual** desires of the school employee or the student. **Sexual** conduct includes but is not limited to the following:

(a) Kissing.

(b) Touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals.

(c) A sex act as defined in [section 702.17](#).

b. **Sexual exploitation** by a school employee does not include touching that is necessary in the performance of the school employee's duties while acting within the scope of employment.

c. The provisions of this subsection do not apply to a person who is employed by a school district attendance center if the student with whom the person engages in conduct prohibited under subsection 3, paragraph "a", is not enrolled in the same school district attendance center that employs the person, the person does not have direct supervisory authority over the student, and the person does not meet the requirements of subsection 1, paragraph "f", subparagraph (1), subparagraph division (a).

4. a. A counselor or therapist who commits **sexual exploitation** in violation of subsection 2, paragraph "a", subparagraph (1), commits a class "D" felony.

b. A counselor or therapist who commits **sexual exploitation** in violation of subsection 2, paragraph "a", subparagraph (2), commits an aggravated misdemeanor.

c. A counselor or therapist who commits **sexual exploitation** in violation of subsection 2, paragraph "a", subparagraph (3), commits a serious misdemeanor. In lieu of the sentence provided for under [section 903.1](#), [subsection 1](#), paragraph "b", the offender may be required to attend a **sexual** abuser treatment program.

5. a. A school employee who commits **sexual exploitation** in violation of subsection 3, paragraph "a", subparagraph (1), commits a class "D" felony.

b. A school employee who commits **sexual exploitation** in violation of subsection 3, paragraph "a", subparagraph (2), commits an aggravated misdemeanor.

Credits

Added by [Acts 1991 \(74 G.A.\) ch. 130, § 2](#). Amended by [Acts 1992 \(74 G.A.\) ch. 1163, § 119](#); [Acts 1992 \(74 G.A.\) ch. 1199, §§ 2 to 6](#); [Acts 2003 \(80 G.A.\) ch. 180, § 65](#); [Acts 2004 \(80 G.A.\) ch. 1086, § 102](#); [Acts 2013 \(85 G.A.\) ch. 90, H.F. 556, § 230](#); [Acts 2014 \(85 G.A.\) ch. 1114, H.F. 2474, § 1](#), eff. May 23, 2014; [Acts 2016 \(86 G.A.\) ch. 1066, H.F. 228, § 6](#), eff. July 1, 2016; [Acts 2017 \(87 G.A.\) S.F. 238, §§ 1, 2](#), eff. July 1, 2017.

Relevant Additional Resources

Additional Resources listed below contain your search terms.

Editors' Notes

HISTORICAL AND STATUTORY NOTES

The 1992 amendment, by ch. 1199, §§ 2 to 6, substituted "**exploitation**" for "abuse" throughout the section; in subsec. 1, in par. b, in unnum. par. 2, deleted "former" preceding "client" and inserted "emotionally" and, in par. f, in unnum. par. 1, substituted "any" for "either or both" and, in subpar. 2, inserted "emotionally dependent" in two places and made other nonsubstantive changes.

"709.15. **Sexual exploitation** by a counselor or therapist

"b. 'Emotionally dependent' means that the nature of the patient's or client's or former patient's or client's emotional condition or the nature of the treatment provided by the counselor or therapist is such that the counselor or therapist knows or has reason to know that the patient or client or former patient or client is significantly impaired in the ability to withhold consent to **sexual** conduct, as described in paragraph 'f', by the counselor or therapist.

"f. '**Sexual exploitation** by a counselor or therapist' occurs when any of the following are found:

"(2) Any **sexual** conduct, with an emotionally dependent patient or client or emotionally dependent former patient or client for the purpose of arousing or satisfying the **sexual** desires of the counselor or therapist or the emotionally dependent patient or client or emotionally dependent former patient or client, which includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

"(3) Any **sexual** conduct with a patient or client or former patient or client within one year of the termination of the provision of mental health services by the counselor or therapist for the purpose of arousing or satisfying the **sexual** desires of the counselor or therapist or the patient or client or former patient or client

which includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

“ ‘**Sexual exploitation**’ by a counselor or therapist’ does not include touching which is part of a necessary examination or treatment provided a patient or client by a counselor or therapist acting within the scope of the practice or employment in which the counselor or therapist is engaged.

“2. A counselor or therapist who commits **sexual exploitation** in violation of subsection 1, paragraph ‘f’, subparagraph (1), commits a class ‘D’ felony.

“3. A counselor or therapist who commits **sexual exploitation** in violation of subsection 1, paragraph ‘f’, subparagraph (2), commits an aggravated misdemeanor.

“4. A counselor or therapist who commits **sexual exploitation** in violation of subsection 1, paragraph ‘f’, subparagraph (3), commits a serious misdemeanor. In lieu of the sentence provided for under section 903.1, subsection 1, paragraph ‘b’, the offender may be required to attend a **sexual** abuser treatment program.”

“b. ‘Emotionally dependent’ means that the nature of the patient's or client's or former patient's or client's emotional condition or the nature of the treatment provided by the counselor or therapist is such that the counselor or therapist knows or has reason to know that the patient or client or former patient or client is significantly impaired in the ability to withhold consent to **sexual** conduct, as described in subsection 2, by the counselor or therapist.

“2. **Sexual exploitation** by a counselor or therapist occurs when any of the following are found:

“b. Any **sexual** conduct, with an emotionally dependent patient or client or emotionally dependent former patient or client for the purpose of arousing or satisfying the **sexual** desires of the counselor or therapist or the emotionally dependent patient or client or emotionally dependent former patient or client, which includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

“c. Any **sexual** conduct with a patient or client or former patient or client within one year of the termination of the provision of mental health services by the counselor or therapist for the purpose of arousing or satisfying the **sexual** desires of the counselor or therapist or the patient or client or former patient or client which includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

“**Sexual exploitation** by a counselor or therapist does not include touching which is part of a necessary examination or treatment provided a patient or client by a counselor or therapist acting within the scope of the practice or employment in which the counselor or therapist is engaged.

“3. **Sexual exploitation** by a school employee occurs when any of the following are found:

“b. Any **sexual** conduct with a student for the purpose of arousing or satisfying the **sexual** desires of the school employee or the student. **Sexual** conduct includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

“**Sexual exploitation** by a school employee does not include touching that is necessary in the performance of the school employee's duties while acting within the scope of employment.

“4. a. A counselor or therapist who commits **sexual exploitation** in violation of subsection 2, paragraph ‘a’, commits a class ‘D’ felony.

“b. A counselor or therapist who commits **sexual exploitation** in violation of subsection 2, paragraph ‘b’, commits an aggravated misdemeanor.

“c. A counselor or therapist who commits **sexual exploitation** in violation of subsection 2, paragraph ‘c’, commits a serious misdemeanor. In lieu of the sentence provided for under section 903.1, subsection 1, paragraph ‘b’, the offender may be required to attend a **sexual** abuser treatment program.

“5. a. A school employee who commits **sexual exploitation** in violation of subsection 3, paragraph ‘a’, commits a class ‘D’ felony.

“b. A school employee who commits **sexual exploitation** in violation of subsection 3, paragraph ‘b’, commits an aggravated misdemeanor.”

CROSS REFERENCES

Board of educational examiners, **sexual** conduct or romantic relationship between a licensee and individual who was a student, misconduct under board’s code of professional conduct, see [§ 272.2](#).

RESEARCH REFERENCES

Treatises and Practice Aids

4 Iowa Practice Series § 6:9, **Sexual** Abuse--Evidence of Other **Sexual** Acts in **Sexual** Abuse Cases ([Iowa Rule of Evidence 5.404\(B\)](#))--Propensity Evidence in **Sexual** Abuse Cases--S701.11.

4 Iowa Practice Series § 6:56, **Sexual** Abuse--**Sexual Exploitation** by a Counselor or Therapist.

4 Iowa Practice Series § 6:59, **Sexual** Abuse--**Sexual Exploitation** by a Counselor or Therapist--Penalties.

4 Iowa Practice Series § 6:60, **Sexual** Abuse--**Sexual Exploitation** by a School Employee.

4 Iowa Practice Series § 6:61, **Sexual** Abuse--**Sexual Exploitation** by a School Employee--Penalties.

4 Iowa Practice Series § 6:106, Commitment of **Sexually** Violent Predators--Elements--**Sexually** Violent Offense.

11 Iowa Practice Series § 5:25, Limitations Periods--General Limitations Statutes--**Sexual** Abuse or **Sexual Exploitation** by Counselor or Therapist.

UNITED STATES SUPREME COURT

Self-incrimination, prisoners, refusal to make admission of criminal history required for participation in **sexual** abuse treatment program, immunity from prosecution, see [McKune v. Lile, 2002, 122 S.Ct. 2017](#).
NOTES OF DECISIONS

Validity

Statutes prohibiting **sexual exploitation** by therapist or counselor and pattern or practice of engaging in same did not violate First Amendment Establishment Clause and analogous provision of Iowa Constitution as applied to members of clergy; rather, statutes applied to all persons who provided or purported to provide mental health services, defendant's status as pastor and parishioner's faith was offered only to establish

why parishioners would agree to **sexual** relationships with defendant, trial court did not dwell on religious doctrine, church elders testified only as fact witnesses regarding admissions and statements made in meetings after defendant's conduct came to light, and evidence of defendant's conduct on congregation was excluded. [State v. Edouard, 2014, 854 N.W.2d 421. Constitutional Law ↗ 1414; Sex Offenses ↗ 5\(8\)](#)

Statutes prohibiting **sexual exploitation** by therapist or counselor and pattern or practice of engaging in same did not violate due process as applied to defendant pastor who engaged in **sexual** relationships with married female parishioners who came to him for guidance on marital and other personal issues, based on defendant's claim that it violated his fundamental right to enter into **sexual** relationships; defendant's relationships with each of parishioners did not involve full and mutual consent, but rather, defendant used his position of authority as counselor to **exploit** their vulnerabilities, and each parishioner testified to physical and/or emotional harm they suffered as result. [State v. Edouard, 2014, 854 N.W.2d 421. Constitutional Law ↗ 4509\(23\); Sex Offenses ↗ 5\(8\)](#)

Defendant waived contention that statute defining offense of **sexual exploitation** by a counselor or therapist was unconstitutionally overbroad, by failing to identify protected freedom allegedly infringed upon thereby, whether in his motion to dismiss or in his argument on appeal. [State v. Gonzalez, 2006, 718 N.W.2d 304. Criminal Law ↗ 1030\(2\); Criminal Law ↗ 1130\(5\)](#)

Statute defining offense of **sexual exploitation** by a counselor or therapist was not unconstitutionally vague as applied to defendant who was a psychiatric nursing assistant, where statutory definition of "counselor or therapist" included "any other person, whether or not licensed or registered by the state, who provides or purports to provide mental health services[.]" thereby clearly identifying individuals coming within statute's prohibitions, and defendant's duties included treatment, assessment, or counseling of another person for cognitive, behavioral, emotional, mental, or social dysfunction, within scope of statute. [State v. Gonzalez, 2006, 718 N.W.2d 304. Constitutional Law ↗ 4509\(23\); Health ↗ 976](#)

Statute criminalizing **sexual exploitation** by counselor or therapist providing "mental health service" was not void for vagueness, on grounds that it might apply to **sexual** activities accompanying informal conversations during which advice was given, in violation of First Amendment; person of ordinary intelligence would know that statute did not reach informal activities. [State v. Allen, 1997, 565 N.W.2d 333, rehearing denied, denial of post-conviction relief affirmed 2001 WL 246201. Constitutional Law ↗ 1818; Sex Offenses ↗ 5\(8\)](#)

In general

It was the fact that defendant was a teacher and the victims were students that made his conduct a crime under statute prohibiting **sexual exploitation** by a school employee. [State v. Romer, 2013, 832 N.W.2d 169. Education ↗ 426; Public Employment ↗ 1055](#)

Violence Against Women Act

Female parishioner's allegations that her priest made **sexual** advances toward her were insufficient to plead violation of state criminal statute prohibiting **sexual exploitation** by a counselor or therapist, as predicate crime of violence underlying her Violence Against Women Act (VAWA) claim; parishioner failed to allege that she received mental health services from the priest for any sort of dysfunction or that she received services at any time proximate to alleged **sexual** advances. [Doe v. Hartz, C.A.8 \(Iowa\)1998, 134 F.3d 1339. Civil Rights ↗ 1035](#)

Priest's alleged **sexual** advances toward female parishioner were not a felony under either state or federal law, and thus could not be predicate "crime of violence" required to support claim under Violence Against Women Act (VAWA); advances were at most aggravated misdemeanor under state criminal statute prohibiting **sexual exploitation** by a counselor or therapist, and two year state sentence for such misdemeanors did not make offense a felony under federal law, because conduct did not violate a federal statute. [Doe v. Hartz, C.A.8 \(Iowa\)1998, 134 F.3d 1339. Civil Rights ↗ 1035](#)

Wrongful imprisonment

Defendant, who was sentenced to an indeterminate term of 5 years in prison as a result of conviction for **sexual exploitation** by a school employee that was reversed on appeal, was not a "wrongfully imprisoned person" under statute allowing compensation for an individual who was wrongfully imprisoned; defendant was temporarily restrained in sheriff's custody while waiting for delivery of his appeal bond, which he filed on the day he was sentenced, defendant was released on the day he was sentenced, and defendant never spent any time in prison. [State v. Nicoletto, 2015, 862 N.W.2d 621. States ↗ 111](#)

Intent

Legislature did not intend to require an existing teacher-student relationship in order for a school employee to violate statute prohibiting **sexual exploitation** by a school employee; legislature did not intend to criminalize actions only by teachers, but by the much broader category of "school employee," which it defined as an administrator, teacher, or other licensed professional, including an individual who holds a statement of professional recognition, who provides educational assistance to students, and some of these individuals might never have a direct teacher-student relationship. [State v. Romer, 2013, 832 N.W.2d 169. Criminal Law ↗ 12.7\(2\)](#)

Legislature did not explicitly require emotional dependency, or a direct or current teacher-student relationship to exist, prior to making the school employee subject to statute prohibiting **sexual exploitation** by a school employee. [State v. Romer, 2013, 832 N.W.2d 169. Education ↗ 426](#)

Crime of **sexual exploitation** of a minor is aimed at the creation, dissemination, and possession of child pornography, rather than merely possessing obscene materials. [State v. Romer, 2013, 832 N.W.2d 169. Courts ↗ 89; Statutes ↗ 1123; Statutes ↗ 1181; Statutes ↗ 1216\(1\)](#)

Sexual conduct

Parishioner's allegations of "kissing" and "fondling" by priest were sufficient to come within the meaning of "**sexual exploitation**" in statute governing **sexual exploitation** by a counselor or therapist. [Doe v. Hartz, N.D.Iowa1999, 52 F.Supp.2d 1027. Assault And Battery ↗ 7.5](#)

Conduct of defendant, who was teacher, in orchestrating and photographing **sexual** conduct between students constituted **sexual** conduct within meaning of statute prohibiting any **sexual** conduct with a student for the purpose of arousing or satisfying the **sexual** desires of the school employee or the student; defendant both photographed the **sexual** conduct and orchestrated the poses, the photographs were clearly **sexual** in nature, defendant engaged in interactive conduct with the students, and the students engaged in **sexual** conduct based on his instructions. [State v. Romer, 2013, 832 N.W.2d 169. Education ↗ 478; Public Employment ↗ 1055](#)

Statute defining “**sexual** conduct” does not require physical contact between the school employee and the student to support a conviction for **sexual exploitation** by a school employee. [State v. Romer, 2013, 832 N.W.2d 169. Infants ↗ 1587; Obscenity ↗ 166](#)

Defendant committed sex acts when he touched victims' genitals under guise of checking for bruises, scratches, hernias, and testicular cancer, as required to support conviction for **sexual exploitation** by counselor and **sexual** misconduct with juvenile offenders, despite lack of testimony by victims that there was anything **sexual** in conduct; defendant was acting outside scope of duties as program supervisor at facility for delinquent boys, defendant had no medical training, and defendant was in position of power over victims. [State v. Bolsinger, 2006, 709 N.W.2d 560, appeal after new sentencing hearing 738 N.W.2d 643. Infants ↗ 1594; Infants ↗ 3129; Infants ↗ 3132; Sex Offenses ↗ 21\(1\)](#)

Relationship

Teacher was a school employee under statute, prohibiting **sexual exploitation** by a school employee, and the minors involved were students within the meaning of statute, and no contemporaneous teacher-student relationship was necessary to violate statute. [State v. Romer, 2013, 832 N.W.2d 169. Indictment And Information ↗ 127](#)

Contemporaneous teacher-student relationship was not required for defendant to be convicted of **sexual exploitation** by a school employee. [State v. Romer, 2013, 832 N.W.2d 169. Education ↗ 478; Public Employment ↗ 1055](#)

License

The statute prohibiting **sexual exploitation** by a counselor, therapist, or school employee, by its terms, does not require that the defendant be licensed or registered by the state, and it covers even persons who merely purport to provide mental health services. [State v. Edouard, 2014, 854 N.W.2d 421. Education ↗ 426; Health ↗ 975; Public Employment ↗ 1055; Sex Offenses ↗ 43](#)

Touching

Crime of **sexual exploitation** by a counselor or therapist does not include touching as part of a necessary examination or treatment provided in the scope of the counselor's or therapist's practice or employment. [State v. Gonzalez, 2006, 718 N.W.2d 304. Health ↗ 975](#)

Counselor or therapist

Defendant's duties as psychiatric nursing assistant amounted to provision of “mental health services[,]” within scope of statute criminalizing **sexual exploitation** by a counselor or therapist, where defendant performed nursing tasks to assist in providing care of psychiatric patients, including establishing therapeutic relationships, providing for therapeutic environment, participating in planning patient care, and providing assessment of patients, all in course of defendant's working relationship with complainant. [State v. Gonzalez, 2006, 718 N.W.2d 304. Health ↗ 975](#)

Defendant, a certified nursing assistant at nursing home, was not “counselor or therapist” providing “mental health services” to resident, within meaning of statute criminalizing **sexual exploitation** by counselor or

therapist; mental health topics covered by nursing assistant's training were modifying her behavior to residents, understanding aging process, understanding behavior of cognitively impaired residents, and learning methods to reduce effects of cognitive impairment, none of which topics were calculated to equip nursing assistant with skills and expertise necessary to treat, assess, or counsel resident. [State v. Meyer, App.2006, 720 N.W.2d 193, 2006 WL 1628039, Unreported.](#) [Health](#) 975

Pattern

Under Iowa law, as predicted by Court of Appeals, two instances of alleged sexual conduct, which happened on the same day and within about an hour of each other, did not constitute "pattern, practice, or scheme of conduct" within meaning of state criminal statute prohibiting sexual exploitation by a counselor or therapist. [Doe v. Hartz, C.A.8 \(Iowa\)1998, 134 F.3d 1339. Sex Offenses](#) 80

Coaches

A mere holder of a coaching authorization without a teaching or other professional license did not fall under the sexual exploitation statute that prohibited "[sexual exploitation] by a school employee," and thus, defendant, a worker at a local pipe manufacturer who was not a licensed teacher but coached high school basketball pursuant to a coaching authorization, could not be convicted under the statute for maintaining a sexual relationship with a student; language of the relevant statutes, the structure of the statutes, and the relevant legislative history supported the conclusion. [State v. Nicoletto, 2014, 845 N.W.2d 421, on subsequent appeal 862 N.W.2d 621. Education](#) 478; [Public Employment](#) 1055

Clergy

Whether defendant pastor provided "pastoral counseling" versus "pastoral care" was not relevant to whether defendant provided mental health services to emotionally troubled female parishioners with whom he engaged in sexual relationships, in trial for sexual exploitation by therapist or counselor. [State v. Edouard, 2014, 854 N.W.2d 421. Sex Offenses](#) 44

That physicians, psychologists, nurses, professional counselors, social workers, marriage or family therapists, and alcohol or drug counselors provided mental health services to clients or patients, within meaning of statute prohibiting sexual exploitation by counselor or therapist, had no bearing on whether defendant, who was pastor, and therefore, member of clergy, sexually exploited emotionally troubled female parishioners to whom he provided or purported to provide mental health services. [State v. Edouard, 2014, 854 N.W.2d 421. Sex Offenses](#) 44

Emotionally troubled female parishioners with whom defendant pastor engaged in sexual relationships were defendant's "patients or clients," within meaning of statute prohibiting sexual exploitation by counselor, therapist, or school employee, if parishioners received mental health services from defendant. [State v. Edouard, 2014, 854 N.W.2d 421. Sex Offenses](#) 44

Sexual exploitation by counselor, therapist, or school employee did not limit defendant's "counseling" as pastor to use of modern psychological principles and methods especially in collecting case history data by use of various techniques of personal interview, and testing interests and aptitudes, nor did it require that defendant be licensed by state to provide mental health services to emotionally troubled female parishioners with whom he engaged in sexual relationships; legislature did not use term "counseling" in any technical

or specialized way, and it specifically covered members of clergy who merely purported to provide mental health services. [State v. Edouard, 2014, 854 N.W.2d 421. Sex Offenses](#) 44

Defendant pastor provided mental health services to married female parishioners in form of counseling for emotional or social dysfunction, including intrapersonal or interpersonal dysfunction, as required to support convictions for **sexual exploitation** by counselor; defendant set up meetings with parishioners, who were experiencing pre-marital difficulties and other personal problems, defendant entered into **sexual** relationships immediately or shortly thereafter, defendant asked deeply personal and probing questions during meetings with parishioners, purporting to guide them through their personal difficulties, which went beyond informal exchange of advice or giving of general spiritual advice. [State v. Edouard, 2014, 854 N.W.2d 421. Sex Offenses](#) 44

Joinder

Defendant engaged in a common scheme or plan, and thus, joinder of the counts, charging defendant with **sexual exploitation** by a school employee, was appropriate; jury concluded that each count defendant was convicted of constituted part of a “common scheme or plan” and that defendant's intent in that common scheme was to victimize children to fulfill his **sexual** desires, two of the three events (and seven of the offenses charged) occurred at defendant's home, defendant displayed similar modus operandi with all of the minors involved, defendant requested victims take nude or seminude photographs of themselves or allow him to take seminude photographs of them, defendant did not show unfair prejudice as result of joinder of offenses, and single trial was in interest of judicial economy. [State v. Romer, 2013, 832 N.W.2d 169. Criminal Law](#) 1141(2)

Indictment and information

Trial information charging defendant with **sexual exploitation** by a counselor or therapist was not subject to dismissal on basis of claim that facts alleged in trial information and attached minutes did not constitute such offense. [State v. Gonzalez, 2006, 718 N.W.2d 304. Indictment And Information](#) 144.1(1)

Failure to state claim

Parishioner failed to allege claim of **sexual exploitation** by a counselor or therapist, where parishioner did not allege that priest served as a counselor to her or that priest was providing “services” to her for any “dysfunction.” [Doe v. Hartz, N.D.Iowa1999, 52 F.Supp.2d 1027. Assault And Battery](#) 7.5

Admissibility of evidence

Evidence that female parishioner with whom defendant pastor had engaged in **sexual** relationship told defendant about affair with another man and asked defendant to lie about it to parishioner's husband fell within scope of rape shield law, in trial for **sexual exploitation** by therapist or counselor and pattern or practice of engaging in same, where defendant sought to introduce evidence of parishioner's **sexual** activity with others, and relevance of such evidence to show that relationship with parishioner was indicative of friendship, rather than one involving counseling, and that parishioner asked defendant to lie about affair, was highly questionable, and it was highly prejudicial in that it tended to suggest that parishioner would engage in **sexual** relationship with defendant because she had affair with other individual. [State v. Edouard, 2014, 854 N.W.2d 421. Sex Offenses](#) 232

Evidence that defendant pastor's home had been vandalized, that his home and car were put for sale on Internet website, and that husband of female parishioner with whom defendant had engaged in sexual relationship had followed him on one occasion was not relevant to explain why he left state and moved to Michigan, in trial for sexual exploitation by counselor or therapist and pattern or practice to engage in same; defendant admitted engaging in sexual relationships with four female parishioners whom he was purportedly counseling on their marital and personal troubles, he testified that "sins" for which resigned warranted his deposition as minister and that he had been censured, which sufficiently explained why he moved to Michigan. [State v. Edouard, 2014, 854 N.W.2d 421. Criminal Law](#) 351(1)

Evidence that defendant pastor's home had been vandalized, that his home and car were put for sale on Internet website, and that husband of female parishioner with whom defendant had engaged in sexual relationship had followed him on a couple of occasions was not relevant to explain why he left state and moved to Michigan, in trial for sexual exploitation by counselor or therapist and pattern or practice to engage in same; defendant admitted engaging in sexual relationships with four female parishioners whom he was purportedly counseling on their marital and personal troubles, he testified that "sins" for which resigned warranted his deposition as minister and that he had been censured, which sufficiently explained why he moved to Michigan. [State v. Edouard, 2014, 854 N.W.2d 421. Criminal Law](#) 351(1)

Evidence that female parishioner with whom defendant pastor engaged in sexual relationship gave defendant \$2000 as opposed to \$70,000 that another parishioner with whom defendant was also engaged in sexual relationship gave defendant was not relevant to whether defendant exploited his position of authority as pastor to engage in sexual relationships with emotionally troubled parishioners, in trial for sexual exploitation by counselor or therapist and pattern or practice to engage in same. [State v. Edouard, 2014, 854 N.W.2d 421. Criminal Law](#) 368.37

Treating psychologists did not impermissibly comment on credibility of alleged victim of sexual exploitation by hypnosis counselor, when they testified that person under hypnosis would not manufacture false memory, and that mental illness of victim had no bearing on her credibility; witnesses were giving permissible opinion testimony regarding effect of her mental condition on her ability to tell truth. [State v. Allen, 1997, 565 N.W.2d 333, rehearing denied, denial of post-conviction relief affirmed 2001 WL 246201. Criminal Law](#) 474; [Criminal Law](#) 474.3(4)

I. C. A. § 709.15, IA ST § 709.15

Current with legislation from the 2017 Regular Session